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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1980

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Petitioners-Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK,
Respondents-Appellees-Plaintiffs.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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QUESTIONS PRESENTED

1. Could mortgagee, who had allegedly illegally foreclosed on mortgagor, gain possession of property by hiring police officers to unlawfully enter and forcibly take possession of property from mortgagor?

2. Could mortgagee hire a criminal attorney, and give him a deed (in violation of K.R.S. 372.070) to maintain charges against mortgagor to gain possession of mortgagor's home?

3. When mortgagee moved to dismiss with prejudice, its legal claim for possession of mortgagor's home, was mortgagor entitled to Judgment, including restitution, where mortgagor had been ousted by threats or violence, intimidation, and criminal prosecution at the instance of the mortgagee (K.R.S. 383.200, etc.).

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No.....

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

Petitioners, Patricia Thompson and Eddie Thompson, Jr. respectfully pray that a Writ of Certiorari issue to review the Judgment (unpublished opinion) of the Court of Appeals of Kentucky, entered in the above styled case on May 2, 1980. App. P. 11a. Petition for Rehearing denied June 27, 1980. App. P. 14a. Discretionary Review denied by Kentucky Supreme Court on November 18, 1980. App. P. 15a. Kentucky Court of Appeals Mandate issued on November 19, 1980. App. P. 16a.

OPINION BELOW

Judgment was entered for Respondent Peoples Liberty Bank in the Kenton Quarterly Court on September 26, 1977. App. P. 1a. Said Judgment was traversed by Petitioners to the Kenton Circuit Court for trial de novo on September 28, 1977.

Supersedeas Bond was executed in the Kenton Quarterly Court. On March 13, 1979, the Kenton Circuit Court denied Petitioners Motion for Trial Date Certain and granted Respondent's Motion to Dismiss their claim with prejudice. App. P. 3a.

The Kentucky Court of Appeals denied Petitioners oral arguments on March 7, 1980 (App. P. 8a) and denied Petitioners Motion for Oral Arguments on April 8, 1980. App. P. 10a.

JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. 1257 (3), this being an appeal which draws into question of the validity of any Kentucky court decision which denies a party relief it is entitled to under the laws of Kentucky as being repugnant to the U. S. Constitution.

The decision being appealed also sanctions a stranger to maintain a suit against a party in violation of state law, K.R.S. 372.070, and also permits a party to hire police officers to search and seize private property as well as threaten and intimidate private citizens without probable cause; all in contravention of the U.S. Constitution, 4th 7th and 14th Amendments.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Fourth Amendment – The *right of the people to be secure in their persons, houses, papers, effects, against unreasonable searches and seizures shall not be violated;* and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Seventh Amendment – In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the Rules of Common Law.

Fourteenth Amendment – Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No *State shall make or enforce any law which shall abridge the privileges of immunities of citizens* of the United States; nor *shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person* within its jurisdiction *the equal protection of the laws.*

FEDERAL STATUTES

28 U.S.C. 1257 (3) – Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: By writ of certiorari, where the validity of a treaty or statute

of the United States is drawn in question or *where the validity of a State statute is drawn in question* on the ground of its *being repugnant to the Constitution,* treaties or laws of the United States, or where *any title, right, privilege or immunity* is specially set up or claimed *under the Constitution,* treaties or statutes of or commission held or authority exercised under, the United States.

KENTUCKY REVISED STATUTES

372.070 (1) — *Any sale or conveyance,* including those made under execution, *of any land or the pretended right or title thereto, of which any other person has adverse possession at the time of the sale or conveyance is void,* but this section does not render void any devise of land in adverse possession.

K.R.S. 383.200. Definitions of forcible entry and detainer. — (1) The words "possession," "entry," "detainer," in KRS 383.200 to 383.285, refer to lands and tenants.

(2) A forcible entry is:

(a) An entry without the consent of the person having the actual possession;

(b) As to landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent.

(3) A forcible detainer is:

(a) The refusal of a tenant to give possession to his landlord after the expiration of his term; or of a tenant at will or by sufferance to give possession to the landlord after the determination of his will;

(b) The refusal of a tenant of a person who has made a forcible entry to give possession, on demand, to the person upon whose possession the forcible entry was made;

(c) The refusal of a person who has made a forcible entry upon the possession of one who acquired it by a forcible entry to give possession, on demand, to him upon whose possession the first forcible entry was made;

(d) The refusal of a person who has made a forcible entry upon the possession of a tenant for a term to deliver possession to the landlord, upon demand, after the term expires; and, if the term expires whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his cost and for his benefit, prosecute it in the name of the tenant.

K.R.S. 383.210. Issual and form of warrant — Jury not summoned unless demanded. (1) Upon complaint by a person aggrieved by a forcible entry or detainer to the district court of the county in which the land or tenement, or a principal part thereof, lies, a warrant shall issue to the sheriff or any constable, in substance as follows: "The commonwealth of Kentucky to the sheriff (or any constable) of . . . county: Whereas A B hath made complaint that C D and E F did on the . . . . day of . . . ., forcibly enter into (or forcibly detain from the said A B) one (1) house and field on the waters of . . . ., in the county aforesaid (or other general description of the lands or tenements) which were in the peaceable possession of A B (or which the said C D and E F, tenants of the said A B, now hold against him) : You are, therefore, commanded to summon a good and lawful jury of your county to meet on the premises, or at a place convenient thereto, on the . . . . day of . . . ., to inquire into the forcible entry (or forcible detainer) aforesaid; and give to the said C D and E F at least three (3) days' notice of the time and place of the meeting of the jury; and have then there this writ. Witness, etc."

(2) In the trial of writs of forcible entry, forcible detainer or forcible entry and detainer, if neither party, in person or by agent or attorney, demand a jury, the trial thereof shall be by the court. No such writ shall hereafter direct the summoning of a jury, and the sheriff or other officer to whose hands such writ may come to do execution thereof shall not summon a jury in such proceedings, unless he by either party notified in writing that a jury is demanded. At the calling of the cause for trial either party may demand a jury. (C.C. 454: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 312, effective January 2, 1978.

K.R.S. 383.220. Return of warrant — Jury — Oath. — At the time for holding the inquisition, the officer shall return the warrant to the court with an indorsement stating when and upon whom it was executed and the place designated by the officer for holding the inquisition, together with a panel of the jury, whereupon, the clerk, whether the defendant is present or not, shall administer an oath to the jurors in substance as follows: "You, and each of you, shall well and truly inquire into and return whether or not the defendant (or defendants) is (or are) guilty of the forcible entry (or detainer) complained of in the warrant in this cause: so help you God." (C.C. 456: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 313, effective January 2, 1978.)

K.R.S. 383.230. Witnesses, subpoenas and coercion of attendance. — The court may issue subpoenas for witnesses at the request of either party, and their attendance and testifying may be coerced by the court which conducts the inquest. (C.C. 458: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 314, effective January 2, 1978; 1978, ch. 384, § 111, effective June 17, 1978.)

K.R.S. 383.235. Verdict — Procedure in case of disagreement. — The jurors, after hearing the evidence, shall, by their inquest, say whether the defendants, or either of them, be guilty or not guilty of the forcible entry or detainer complained of; and shall return their inquest, signed by one (1) of their body, to the court. If the jury do not agree, it may be discharged, and another be ordered to be summoned to meet, either immediately or at some future day to be then and there fixed and indorsed on the warrant; and this proceeding shall be continued until a jury agree. (C.C. 459: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 315, effective January 2, 1978.)

K.R.S. 383.240. Form of judgment. — Upon the return of the inquest the court shall enter a judgment according to the inquisition, either for the plaintiff, in substance, that he have restitution of the premises aforesaid, and recover of the defendants his costs in this behalf expended; or for the defendants, in substance, that they recover of the plaintiff their costs in this behalf expended; or for the plaintiff against some of the defendants, and for the other defendants against the plaintiff, if some be found guilty and others not guilty. (C.C. 460: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 316, effective January 2, 1978.)

K.R.S. 383.245. Proceedings upon failure to file appeal — Form and issual of warrant of restitution. — If the party against whom the inquisition is found fails to file an appeal on the inquisition with the court, on or before the seventh day after the finding of the inquest, the court shall, on request, issue execution for the costs; and, if the inquisition be in favor of the plaintiff, it shall also issue a warrant of restitution in the favor of the plaintiff, it shall

also issue a warrant of restitution in substance as follows: " ..... County. To the sheriff (or any constable) of ..... county, Whereas, C D and E F have been found guilty of a forcible entry in (or detainer of) one house and field, lying on the waters of ....., in the county aforesaid (or other general description of the possessions), to the injury of A B: You are therefore, in the name of the Commonwealth of Kentucky, commanded that, with the power of the county if necessary, you put the said A B in the possession of said premises; and make return within ..... days, how you have executed this warrant. Given under my hand this ..... day of .....

..... District Court Judge"

(C.C. 461: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 317, effective January 2, 1978.)

K.R.S. 383.250. Preservation of papers, records and proceedings — Transcript. The clerk of the court shall carefully preserve all papers, records and proceedings, relating to the cause; and shall deliver, to any person requiring it, a transcript thereof. (C.C. 462: trans. Acts 1952, ch. 84 § 1, effectively July 1, 1953; 1976 (Ex. Sess.), ch. 14 § 318, effective January 2, 1978.)

K.R.S. 383.255. Time for filing appeal — Deposit of money with clerk — Return of papers or transcript to circuit court. — If either party conceive himself aggrieved by the judgment of the court, he may file an appeal within seven (7) days next after the finding aforesaid, and shall deposit with the circuit court clerk the amount of rent owing and due from the onset of the forcible entry and detainer proceedings as well as the amount of all future rents, as it becomes owing and due in each succeeding month during the pendency of the appeal. The rental moneys collected

in this account shall be distributed by court order at the conclusion of an appeal.

(2) Upon the aggrieved party perfecting his appeal by the payment of moneys into court pursuant to subsection (1) of this section the court shall stay all further proceedings on the inquisition, and return the whole of the papers and proceedings, or a fair transcript thereof, to the office of the circuit court of said county, within then (10) days thereafter. (C.C. 463: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 319, effective January 2, 1978.)

K.R.S. 383.260. Recovery of damages and expenses. — Upon this deposit, if the appellant fails to prosecute his appeal, he and his surety shall be liable for the damages for withholding the possession which the appellee may be entitled to recover against the appellant, during the pendency of the appeal, either in the circuit court or Court of Appeals, as well as the reasonable expenses of the appellee in defending the appeal. (C.C. 464: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953; 1976 (Ex. Sess.), ch. 14, § 320, effective January 2, 1978; 1978, ch. 384, § 112, effective June 17, 1978.)

426.200. Sale of land — Place of — Advertisement — Appraisement. — (3) Before a sale of land, the officer shall have the land appraised, under oath, by two (2) disinterested, intelligent housekeepers of the county, who may be sworn by him. If the appraisers disagree, the officer shall act as umpire. If a part of a tract only is sold, the part sold shall, after the sale, be revalued in like manner. The appraisal shall be in writing, signed by the persons making it, and returned with the execution. The officer shall refer to and explain the proceeding in his return on the execution, which return shall be recorded in full.

(1682: amend. Acts (Ex. Sess.), ch. 14, § 428, effective January 2, 1978.)

K.R.S. 426.525. Mortgage foreclosure forbidden — Rights of mortgagee after default. — Foreclosure of a mortgage is forbidden; Provided, however, That this section shall not preclude a mortgagee after default from taking possession of property subject to the mortgage which has been abandoned by the mortgagor, for the purpose of preserving and maintaining the same, harvesting crops, or letting the same, all to the account of the mortgagor; and any reasonable expenses incident thereto including taxes and insurance shall be added to the principal of the mortgage, and secured by it. For the purpose of this section, property shall be deemed to have been abandoned when the mortgagor has moved from the property and when by the nature of the property in question when further neglect or failure to attend will decrease its value. Any right a mortgagee acquires in a tenant's interest in crops raised on shares is inferior to any prior existing lien of the landlord on the tenant's interest. Nothing in this section shall be construed as conflicting with the provisions of KRS 383.-110. (C.C. 375: trans. Acts 1952, ch. 84, § 1; amend. Acts 1972, ch. 90 § 1.)

KENTUCKY CIVIL RULES

Ky. CR 41.01. Voluntary dismissal, Effect thereof. — (1) By Plaintiff by Stipulation. Subject to the privisions of Rule 23.02, of Rule 66, and of any statute, an action, or any claim therein, may be dismissed by the plaintiff without order of court, by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or by filing a stipulation of dismissal signed by all parties who

have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, of the United States or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this rule, an action or any claim therein, shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this section is without prejudice. (Amended effective April 1, 1963, amended October 18, 1977, effective January 1, 1978.)

Ky CR 76.16 (4). A person who is not a licensed attorney at law will be permitted to make an oral argument only with special leave of the court.

KENTUCKY CONSTITUTION

Section 115. In all cases, civil or criminal, there shall be allowed as a matter of right at least one appeal to another court. . . .

STATEMENT OF CASE

The instant action was instituted by respondent to gain possession of petitioners' home and another property after an illegal foreclosure.

Petitioners lived in all all white neighborhood in the City of Covington. Petitioners built their home in 1966 in a section of the city where city officials, banks, and realtors had prevented black families from buying homes. Eighty-eight lots have been available for single family homes in this neighborhood in an urban renewal project since 1965, and are still available.

The Judge in the Kenton Circuit Court resides 3 doors from petitioners' home.

Petitioner Eddie Thompson, Jr. had attempted to contest a primary election in Covington in 1975. As a result of such efforts, respondent illegally foreclosed on three pieces of property petitioners owned or had an interest in.

Mr. Nelson, counsel for respondents, represented one of the defendants in the election contest. Mr. Nelson was allegedly unpaid for his services. Mr. Nelson has allegedly stated that petitioner Eddie would be taken care of for contesting the election.

On false information by a city police officer, a sealed indictment was handed down on April 14, 1976, by the Kenton County Grand Jury. These charges were not dropped until June 23, 1978, 2 months after police officers, who were paid by respondents, had beaten petitioner Eddie on April 16, 1978, then charged him with another felony – assault on a police officer. That charge was later dropped.

The Peoples Liberty Bank arbitrarily refused payment on petitioners' home to create a delinquent mortgage ac-

count. After the Bank refused payment for 3 months, petitioners mailed their payments to the Bank, but the Bank had their counsel, Mr. Nelson, return those payments. App. P. 21a.

Petitioners' home was worth $40,000. Petitioners owed the Bank $6,836 on their home.

Petitioners were not given an opportunity to present evidence to the Master Commissioner. Mr. Nelson did not appear at the hearing and no appraisal was ever made of petitioners' property.

Judgment foreclosing the mortgage on petitioners' home and another property that had no connection with petitioners' home was entered on or about June 26, 1977.

Subsequent to the illegal foreclosure, September 14, 1977, respondent filed a forcible entry and detainer action in the Kenton Quarterly court to gain possession of petitioners' home. Petitioners sought a trial by jury, which was denied and a favorable Judgment (writ of restitution in 3 days) was entered for the Bank on September 26, 1977. App. P. 1a.

Said Judgment was successfully traversed to the Kenton Circuit court for (jury) trial de novo, and no writ of restituition was ever issued. App. P. 11a.

In order to abridge petitioners' rights to a trial by jury and to circumvent the law, respondent temporarily abandoned their forcible entry and detainer action.

On October 19, 1977, Mr. Nelson (counsel for respondent caused a "Writ of Possession" to be issued in the illegal foreclosure proceeding. Without notice, while petitioners were at work, sheriff deputies entered petitioners' home and had their possessions put upon the street. Petitioners put their possessions back into their home and appealed the October 19, 1977 order.

Said order "writ of possession" was entered more than 10 days after Judgment in the illegal foreclosure and was dismissed by the Kentucky Court of of Appeals on March 30, 1978.

As a result of the dismissal, Mr. Nelson wrote petitioners a letter (April 3, 1978) telling them to call him (within 10 days) and let him know when they were voluntarily moving from their home.

Petitioner Eddie did call Mr. Nelson and inform him that they (petitioners) were not voluntarily leaving their home. Mr. Nelson informed Eddie that if petitioners did not voluntarily leave he would have him taken care of.

Without notice or hearing (on April 12, 1978) Mr. Nelson had the same Judge to sign a second order "writ of possession" in the illegal foreclosure. App. P. 22a.

On April 15, 1978, the Bank and their attorney, Mr. Nelson, hired police officers who beat and threatened petitioner Eddie's life. Todd Finan was one of these police officers. App. P. 19a.

On July 19, 1978, without notice or hearing (while petitioners were at work) sheriff deputies and police officers broke into petitioners' home and put their possessions upon the street. App. P. 22a.

Petitioners were not made aware of the April 12, 1978, order until the sheriff deputies gave Eddie a copy on July 19, 1978. When Eddie questioned the sheriff deputy about the April 12, 1978 date, the deputy said, "See the Judge," and left. When petitioner Eddie questioned the Judge about the April 12, 1978 order, he admitted there was no hearing before he signed the order on April 12, 1978, and it was probably invalid. The Judge signed no new order.

Petitioner Eddie went back to put his possessions in the house. Police officers threatened to arrest Eddie for criminal trespassing if he did not leave his home.

Police officers claimed they had leased the Thompson home from the Bank. App. P. 18a.

These police officers (paid $5 an hour by Peoples Liberty Bank) occupied the Thompsons' home (24 hours a day) from July 19, 1978, to July 27, 1978, when a group of neighbors and friends approached the Mayor and City Commissioners with a petition to ascertain why police officers were occupying the Thompsons' home. On hearing of the petition, the police officers left and the Thompsons moved their belonging back into their home. (The belongings were set on the sidewalk while policemen occupied the house).

Unknown to petitioners, on July 27, 1978, the Bank and their attorney hired a criminal lawyer, Mr. Richard Slukich, and gave him a general warranty deed for $1 (One Dollar) and other good and valuable consideration. The other good and valuable consideration apparently being that he maintain criminal charges against petitioner, Eddie, which Mr. Slukich did. The charge of criminal trespass brought by Mr. Slukich is still on appeal.

On July 29, 1978, Mr. Slukich came to the Thompson home, told petitioner, Eddie, that he had bought the Thompson home and if he (Eddie) did not leave, he would have him (Eddie) arrested for criminal trespassing. Petitioner, Eddie, asked Mr. Slukich to show him his deed. Mr. Slukich said he did not have it with him. When petitioner, Eddie, would not leave home, Mr. Slukich had him arrested for allegedly criminal trespassing.

Mr. Slukich then had a police officer file a false charge of Burglary in the first degree against petitioner, Eddie. The Kenton County Commonwealth Attorney told petitioner (Eddie) if he would forget about his (Eddie's) home, he (the prosecutor) would drop the burglary charges against him. When petitioner declined to forget about his

home, the Kenton County Attorney took the burglary charges to the Grand Jury on two separate occasions.

The Grand Jury dismissed the charges in both instances.

Subsequently, police officers paid by the Bank, stood watch while 2 men allegedly hired by Mr. Slukich, broke into the petitioners' (Thompsons') home and changed the locks on the doors. Petitioners could only stand by and watch (and take pictures).

Some time later, persons allegedly hired by Mr. Slukich, went into the Thompsons' home and stole all their worldly possessions (furniture, clothing, business tools, business records, personal effects, money, etc.).

The mortgagee (respondent) has not made an accounting to the mortgagor (petitioners) in the illegal foreclosure.

Petitioners reported their personal possessions stolen. However, local law enforcement officers refuse to act on petitioners' complaint and the whereabouts of their personal possessions are still unknown.

Apparently having considered his mission a success, on March 5, 1979, Mr. Nelson, counsel for the Bank, moved the Kenton Circuit Court to dismiss this action.

On March 13, 1979, the Kenton Circuit Court denied petitioners-defendants' Motion for a Trial Date Certain and granted respondent-plaintiff's Motion to Dismiss With Prejudice. App. P. 3a.

REASONS FOR GRANTING WRIT

Petitioners are the only family in Kentucky (if not the United States of America) where bank officers and/or agents have hired police officers and a criminal attorney to use force and threats to take private property without any authority of law.

In this state a Judgment foreclosing a mortgage as commonly expressed, does not divest title or confer possession. *Springfield Fire and Marine Ins. Co.* v. *Phillips,* 16 K.L.R. (Abstract) 390 . . . Nor does the mortgage convey an estate in the land to the mortgagee. *Morgan* v. *Wickliffe,* 24 K.L.R. 1039 (1902) 70 S.W. 680 . . . and the mortgagee must make an accounting to mortgagor for actual value instead of selling value of property. *Aultman and Taylor Co.* v. *Mead,* 121 Ky 241.

Sale of land under execution without appraisement is void . . . No coercive sale for debt can be lawfully made in absence of violation. *Angel* v. *Byars,* 153 Ky 208, *Adams* v. *Napier* (1960), 334 S.W. 2d 915.

After respondents hired police officers and a criminal lawyer to gain possession of petitioners' home through duress, force, and threats of violence, they (respondents) claimed in the Kenton Circuit Court that the issues herein were moot, which facts were unsubstantiated.

Petitioners had claimed in addition to general threats and harassment, that on April 15, 1978, Mr. Nelson had conspired to have police officers beat petitioner Eddie; and that as a cover-up, the officers charged Eddie with assault on a police officer, disorderly conduct, resisting arrest, and DUI; and that on July 19, 1978, police officers, without any authority of law, threatened petitioner, Eddie, with bodily harm and took over and occupied petitioners' home;

and occupied it 24-hours a day until July 27, 1978 – Reply to Motion to Dismiss, Kenton Circuit Court. One of the police officers has admitted that at least 7 police officers were paid $5 an hour to occupy the Thompson home. App. P. 19a.

The claim by Mr. Nelson, counsel for the Bank, that the Bank now has possession of the property in dispute did not render the question present herein moot.

In the first place, the question for decision was whether or not appellant was guilty of forcible detainer at the time the warrant was issued; therefore, it could not become moot by the mere fact that the (alleged) owner of the premises obtained possession thereof after a default judgment (writ of restitution) had been rendered and traversed.

Then, too, there is the question of appellant's liability to the Traverse Bond. *Buckner* v. *Kelly,* 158 Ky 407, 165 S.W. 419. In the second place, this court cannot recognize a procedure whereby the attorney representing the appellee may dismiss the appeal merely by a letter . . . saying that he and opposing counsel have settled, or agreed to settle, the controversy (nor a controverted affidavit filed by appellee) . *Bledsoe* v. *Leonhart,* Ky, 205 S.W. 2d 483.

That brings us to the question, "Will the filing of a forcible detainer action under Kentucky Revised Statutes K.R.S. 383.200 through 383.260 support the forcible taking of property in the peaceful possession of another?"

The general purpose of these statutes is, that not regarding the actual condition of the title to the property, where any person is in the peaceable and quiet possession of it, he shall not be turned out by the strong hand, by force, by violence or by terror. The party so using force and acquiring possession may have the superior title or may have the better right to the present possession, but the

policy of the law in this class of cases is to prevent disturbances of the public peace, to forbid any person righting himself in a case of that kind by his own hand and by violence, and to require that the party who has in this manner obtained possession shall restore it to the party from whom it has been so obtained; and then, when the parties are in status quo, or in the same position as they were before the use of violence, the party out of possession must resort to legal means to obtain his possession, as he should have done in the first instance. This is the philosophy which lies at the foundation of all these actions of forcible entry and detainer, which are declared not to have relation to the condition of the title, or to the absolute right of possession, but to compelling the party out of possession, who desires to recover it of a person in the peaceable possession, to respect and resort to the law alone to obtain what he claims. . . . and in fact, that, all owners or claimants of real estate, large corporations, with vast bodies of employees and servants ready to execute their orders, are the last persons who should be permitted to right themselves by force. *Iron Mountain and Helena Railroad* v. *Johnson,* 119 US 608, 30 LEd 504.

The Seventh Amendment, which provides that in suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, guarantees the right to trial by jury in an action brought . . . . (K.R.S. 383.210, etc.) for the recovery of possession of real property, since at common law various forms of action for the recovery of possession of real property were actions at law in which trial by jury was afforded. *Pernell* v. *Southall Realty,* 416 US 363.

Mr. Nelson, counsel for Peoples Liberty Bank, realized that their scheme was slowly unfolding and that a trial by jury would reveal, inter alia, that the Bank had re-

fused petitioners mortgage payments on their home; that there has been no appraisal of petitioners' home; that the Bank's attorney had hired police officers who beat petitioner, Eddie; that the Bank had paid police officers to take command of the Thompsons' home without authority of law; that the Bank had hired Mr. Slukich to maintain criminal trespass charges against petitioner, Eddie; that the Bank had not acquired any lawful possession of the Thompsons' (petitioners') home and property; and that the Bank had not made an accounting to petitioners.

To abridge the right to trial by jury, respondent, Peoples Liberty Bank, moved for dismissal.

After a hearing, the court ordered a dismissal of the Bank's action with prejudice. Ky CR. 4101 (2). App. P. 3a.

But dismissal of action with prejudice had the effect of final adjudication on merits favorable to defendants. *Wainwright Securities, Inc.* v. *Wall Street Transcript,* 80 F.R.D. 103.

An adjudication in favor of the defendants by court or jury can rise no higher than this. *Smoot* v. *Fox,* 340 F 2d 301. *Olsen* v. *Muskegon Piston Ring Co.,* 117 F 2d 163 . . . . and is conclusive of the rights of the parties. *Union Indemnity Co.* v. *Brenton Lumber Co.,* 18 S.W. 327, *Fenton* v. *Thompson,* 176 S.W. 2d 456, *Selas Corporation of America* v. *Wilshire Oil Co. of Texas,* 57 F.R.D. 3.

Voluntary dismissal by plaintiff (and K.R.S. 383.240) carries Judgment for cost and defendant is entitled to execution for satisfaction for such cost. *Fleetwood* v. *Milwaukee Ins. Co.,* 7 F.R.D. 680 . . . and it may include cost and other disbursement. *Mann* v. *Edward,* 37 F.R.D. 452.

Mr. Nelson wilfully neglected to file a timely brief in the Kentucky Court of Appeals.

The Kentucky Courts of Appeals have ceremoniously condemned the failure of an appellee to file a brief.

In *Belcher* v. *Elkins,* 347 S.W. 2d 503, the court said "Failure of an appellee to file brief is the equivalent of confession of error." That court has further held, "Where appellants statement of facts in brief is not contested, it will be accepted as correct." *Copley* v. *Craft,* 341 S.W. 2d 70, *Hall* v. *Hamlin,* 484 S.W.2d 853, *Callahan* v. *Callahan,* Ky. App., 579 S.W. 2d 385.

Any alleged sale by respondent bank to Mr. Slukich would/was in violation of K.R.S. 370.070.

Arguendo the Bank sold petitioners' home to Mr. Slukich and he went to the Thompsons' home and found the Thompsons living there, his legal course would have been to file a forcible entry and detainer action. Or, have the Bank to file the forcible detainer. The deed was a special warranty deed wherein the grantor (Respondent) convenanted to "warrant and forever defend" the title to the same, to the grantee and his heirs, against all persons claiming "by, through, or under the grantor or heir." However, since Mr. Slukich was working for the Bank, he used police officers hired by the Bank and filed criminal trespass charges against Petitioner, Eddie.

Mr. Slukich was allowed to assist the prosecutor (in the trial on criminal trespass charges) in the Kenton District Court, and also be a witness, even though separation of witnesses was ordered by the court.

The purpose of the statute which makes champerous the sale of real estate which is held in adverse possession is to discourage litigation, by prohibiting one who has a doubtful title, and who is not willing to sue upon his title, from selling it to another. *Perry* v. *Wilson,* 208 S.W. 776. Deeds by Board of Education seeking to convey land held in open adverse possession by another were void under Champerty Statute. Whether or not adverse possession would have

run against the Commnowealth, since the occupant's possession was sufficient to give the grantee notice of claim and was of the type to establish adverse possession. *Meade* v. *Sturgill,* Ky (1971), 467 S.W. 2d 363.

Kentucky Constitution, Section 115 provides, "In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court . . ."

However, the Kentucky Court of Appeals by CR 76.16 (4). A person who is not a licensed attorney at law will be permitted to make an oral argument only with special leave of the court. Petitioners were denied leave of court. Petitioners agree that the right of appeal guaranteed by Kentucky Constitution, Section 115 should be conditioned upon strict adherence to orderly rules of procedure, but as here, when the party has complied with rules, oral argument should be allowed.

In *Detroit Demolition Corp.* v. *Burrought Corp.*, it was held that "The Court of Appeals denied appellant an essential element of the right of appeal when it decided appeal without giving parties an opportunity to present oral argument directed to the finding of the trial court." 392 Mich 769, 219 N.W. 2d 613.

Mr. Nelson (counsel for the Bank) in this motion to dismiss appeal by affidavit stated, "This may be the only case in history where a successful litigant has appealed a victory."

In the Bank's untimely brief to the Court of Appeals, Mr. Nelson argued, "It is difficult to argue why a loss should not have been a loss when the loss was requested by the losing party."

The Unpublished Opinion of the Court of Appeals of Kentucky (App. P. 11a) construes K.R.S. 383.200 through 383.260, K.R.S. 272.070, Ky CR 41.01 (2) and Kentucky Constitution, Section 115 in such a way as to be repugnant

to the United States Constitution, 4th, 7th, and 14th Amendments.

The decision is contrary to Kentucky Law as cited in *Bledsoe* v. *Leonhart,* 205 S.W. 2d 385, *Copley* v. *Craft,* 341 S.W. 2d 70, *Callahan* v. *Callahan,* 579 S.W. 2d 385, *Meade* v. *Sturgill,* 467 S.W. 2d 363, *Union Indemnity Co.* v. *Benton County Lumber Co.,* 18 S.W. 327, and Federal Law as cited in *Smoot* v. *Fox,* 340 F 2d 301, *Wainwright Securities, Ins.* v. *Wall Street Transcript,* 80 F.R.D. 103, *Olsen* v. *Muskegon Piston Ring Co.,* 117 F 2d 163, *Iron Mountain and Helena Railroad* v. *Johnson,* 119 U.S. 608, 30 LEd 504, *Pernell* v. *Southhall Realty,* 416 U.S. 363, 40 LEd 2d 198, 94 SCt 1723, and *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388, 29 LEd 2d 619, 91 SCt 1999. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures shall not be violated. *Bivens, supra.*

The Kentucky Court of Appeals held, "It is the Bank not the Thompsons, who are prejudiced with respect to the proceedings. App. P. 13a. Yet, that Court refused to order judgment with cost entered for Appellants-petitioners, and that Appellants-petitioners be restored to the possessions they had before they were ousted by police officers paid by the Bank (who also beat petitioner, Eddie, and threatened his life) ; and a criminal attorney paid by the Bank to maintain charges against petitioner, Eddie.

CONCLUSION

It is clear that Respondent did not gain possession of petitioners' home through this action, App. P. 13a, or any other *legal* action, but rather, that respondent hired a criminal attorney and Covington Police Officers who used criminal prosecution, intimidation, threats of violence and force to gain possession of petitioners' home, in contravention of their Constitutional rights, U.S. Constitution 4th, 7th, and 14th Amendments.

It is also clear that respondents knew all along that they were wrong and their Motion to Dismiss with Prejudice and their neglect to file a timely brief in the Kentucky Court of Appeals were all confessions of error.

Yet, the Bank still has Mr. Slukich maintaining a criminal trespass charge against Petitioner, Eddie.

Since Petitioners are entitled to Judgment as a matter of law, Petitioners pray this court remand this case to the Kenton District Court with instructions to execute Judgment for a Writ of Restitution and cost for Petitioners-defendants; that Petitioners be put in the same position that they were before the use of intimidations, threats of violence (by Covington Police Officers paid by Respondent) and criminal prosecution by a stranger (Mr. Slukich) to this matter. This will permit Petitioners to pursue their claim of the alleged illegal foreclosure and/or the respondent (Bank) to resort to legal means to obtain possession, as it should have done in the first instance.

Respectfully,

. . . . . .

PATRICIA THOMPSON, Pro Se

. . . . . .

EDDIE THOMPSON, JR., Pro Se

CERTIFICATE OF SERVICE

I hereby certify that 3 copies of the foregoing Petition have been served by the United States mail, upon: Mr. Richard Nelson, 11 W. 6th Street, Covington, Kentucky 41011, and Mr. Steve Beshear, Attorney General, Capitol Building, Frankfort, Kentucky 40601.

.....

PATRICIA THOMPSON, Pro Se

.....

EDDIE THOMPSON, Pro Se
736 Highland Avenue –
P.O. Box 1221
Covington, Kentucky 41011
(606) 491-6278

EXHIBIT A

KENTON QUARTERLY COURT

NO. 9817

THE PEOPLES LIBERTY BANK AND TRUST COMPANY OF COVINGTON, KENTUCKY,

Plaintiff,

vs.

EDDIE THOMPSON, JR. and PATRICIA THOMPSON,

Defendants.

JUDGMENT

(Filed ————)

The within matter having come on for trial before the Court on September 21, 1977 upon complaint of the plaintiff for forcible detainer, it appearing to the Court that summons was duly issued in this cause and served upon each of the defendants, counsel for the plaintiff being present, defendant, Eddie Thompson, Jr., being present, it being unknown to the Court whether defendant, Patricia Thompson, was present although the Court observed a female in the courtroom, and the Court being otherwise sufficiently advised;

At the commencement of the hearing a motion was filed by the defendants to dismiss. The Court having reviewed said motion and hearing arguments in support of and against same, and being otherwise sufficiently advised;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that said motion be and the same is hereby overruled.

Counsel for the plaintiff having presented the Court with the deeds referred to in paragraph one of Count One and paragraph four of Count Two and further with "Notices to Leave the Premises" duly served upon each of the defendants on August 11, 1977, the Court finds that the plaintiff is the owner of the two (2) parcels of real estate herein involved, that the defendants are in possession of said premises against the will and consent of the plaintiff and that the defendants detain same.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that judgment be entered herein in favor of the plaintiff and against the defendants, jointly and severally, that a Writ of Restitution issue three (3) days from the date of this judgment and that the plaintiff recover of the defendants, jointly and severally, it's court costs herein expended.

DATED at Covington, Kenton County, Kentucky, this 26th day of September, 1977 at the hour of 10:00 a.m.

/s/ WILLIAM E. WEHRMAN, JR.
Trial Commissioner

This cause having been referred to the above Trial Commissioner of this court, who heard the proof, studied the applicable law, and reported his findings with the above order to the court:

It is ordered and adjudged by the court that said findings and order be, and they are hereby approved and entered of record as the judgment in this case.

/s/ JAMES DRESSMAN
Judge

[CERTIFICATION OMITTED]

cc: Mr. Eddie Thompson, Jr.
Mrs. Patricia Thompson

EXHIBIT B

KENTON CIRCUIT COURT
SECOND DIVISION

NO. 33430

THE PEOPLES LIBERTY BANK AND TRUST COMPANY OF COVINGTON, KENTUCKY,
Plaintiff,

vs.

EDDIE THOMPSON, JR. and PATRICIA THOMPSON,
Defendants.

ORDER AND JUDGMENT
(Filed March 13, 1979)

The within matter having come on for hearing before the Court on March 12, 1979 upon motion of the appellee-

movant to dismiss this matter as moot (accompanied by affidavit) and upon motion of the appellants for a trial date, the appellee-movant being present by counsel, each of the appellants being personally present, arguments having been heard and the Court being otherwise sufficiently advised;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED as follows:

1. The motion of the appellants for a trial date certain be and it is hereby overruled.

2. The motion of the appellee-movant to dismiss the within matter as captioned above in the Kenton Circuit Court and as originally filed in the Kenton Quarterly Court under Case No. 9817 be and the same is hereby sustained and said matters are dismissed with prejudice as moot.

DATED at Covington, Kenton County, Kentucky, this 13 day of March, 1979.

/s/ WM. R. DUNN
Judge, Kenton Circuit Court

cc: Mr. Eddie Thompson, Jr.
Mrs. Patricia Thompson
Hon. Richard S. Nelson

EXHIBIT C

KENTON CIRCUIT COURT
SECOND DIVISION

NO. 33430

THE PEOPLES LIBERTY BANK AND
TRUST COMPANY OF COVINGTON, KENTUCKY,

Plaintiff,

vs.

EDDIE THOMPSON, JR. and
PATRICIA THOMPSON,

Defendants.

ORDER

(Filed April 13, 1979)

The within matter having come on for hearing before the Court on April 9, 1979 at the regular call of the motion docket of this Court upon Motions of the appellants (defendants) to "Alter and/or Amend Judgment to Conform to Civil Rule 52.01, etc." and upon their Motion for the Judge of this Court to disqualify himself, appellants, Eddie Thompson, Jr. and Patricia Thompson both being present, the appellee being present by counsel, arguments having been heard and presented and the Court being otherwise sufficiently advised;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED as follows:

1. The Motion of the appellants to alter and/or amend the Judgment entered herein on March 13, 1979 which dismissed the within action on Motion of the appellee with prejudice as moot, is overruled. The Motion of the appellants to alter and/or amend that Judgment is based upon the allegation that this Court failed to make Findings of Fact and Conclusions of Law in entering it's Order and Judgment entered on March 13, 1979 and orally announced on March 12, 1979. It should be noted, however, that Civil Rule 52.01 does not require Findings of Fact and Conclusions of Law on Motions except those provided for in Civil Rule 41.02. The case at Bar was dismissed on Motion filed under Civil Rule 41.01 (2).

2. The Motion of the appellants for the Judge of this Court to disqualify himself is also overruled. The Motion requesting disqualification was not filed until subsequent to the ruling orally announced on March 12, 1979 and later confirmed by written Order and Judgment entered March 13, 1979. Had it even been filed prior to such ruling, it does not allege facts sufficient to require disqualification of this Judge.

DATED at Covington, Kenton County, Kentucky, this 13 day of April, 1979.

/s/ WM. R. DUNN
Judge, Kenton Circuit Court

cc: Hon. Richard S. Nelson
Mr. Eddie Thompson, Jr.
Mrs. Patricia Thompson

[CERTIFICATION OMITTED]

EXHIBIT D

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

vs.

PEOPLES LIBERTY BANK,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT
ACTION NO. 33430

ORDER

(Entered November 20, 1979)

BEFORE: GANT, HOWARD, and WHITE, JUDGES.

The appellee has moved to dismiss this appeal because counsel for appellee has received no notice that appellants have complied with this Court's order of September 5, 1979. This Court, being advised on the matter, finds appellants have complied with its order and the motion is hereby DENIED.

ENTERED: November 20, 1979

/s/ WILLIAM N. GANT
Judge, Court of Appeals

EXHIBIT E

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

vs.

PEOPLES LIBERTY BANK,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT
ACTION NO. 33430

ORDER DENYING MOTION TO FILE LATE BRIEF
(Entered March 7, 1980)

BEFORE: HOWARD, BREETZ, AND GUDGEL, JUDGES.

The appellee has moved for leave to file a late brief. The appellee submits as grounds for the motion that counsel was awaiting this Court's ruling on a motion to dismiss before filing the appellee brief. The appellants object to the motion.

The record reflects that the appellee first moved to dismiss the appeal on October 10, 1979. At this time, appellee had four (4) days in which to file a brief. CR 76.12 (2) (a). Appellee's time was suspended by the filing of the motion to dismiss pursuant to CR 76.34 (6) (b). The Court entered an order denying the motion to dismiss on November 20, 1979. Appellee's brief was therefore due to be filed on November 24, 1979. CR 76.34 (6) (b). Pursuant to CR 6.01, appellee's brief could have been timely filed on Monday, November 26, 1979. The second motion to dismiss, filed on November 28, 1979, was therefore not timely filed so as to suspend the time under CR 76.34 (6) (b). Therefore, the order denying the motion to dismiss, entered on January 18, 1980, did not start appellee's time. It therefore appears that the grounds raised in appellee's motion are not well founded.

The Court having considered the motion for an extension and the response, and being otherwise sufficiently advised, ORDERS that the motion be, and it is hereby, DENIED.

It further appearing to the Court that appellants are not licensed to practice law in this state and are proceeding pro se in the above-styled action, it is hereby ORDERED that no oral arguments be scheduled in this appeal. CR 76.16.

ENTERED: March 7, 1980

/s/ HARRIS S. HOWARD
Judge, Court of Appeals

EXHIBIT F

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

vs.

PEOPLES LIBERTY BANK,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT
ACTION NO. 33430

ORDER

(Entered April 8, 1980)

The appellants have made a motion to reconsider this Court's order entered March 7, 1980, denying oral arguments in this case. In addition, the appellants have moved for oral arguments. This Court, having considered the matter and otherwise being sufficiently advised, hereby ORDERS that the motion of the appellants for oral argument and the motion to reconsider this Court's order of March 7, be and it is hereby DENIED.

ENTERED: April 8, 1980

/s/ JOHN P. HAYES
Chief Judge, Court of Appeals

EXHIBIT G

OPINION RENDERED: May 2, 1980
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

vs.

PEOPLES LIBERTY BANK,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE WILLIAM R. DUNN, JUDGE
ACTION NO. 33430

AFFIRMING

BEFORE: HAYES, Chief Judge, BREETZ and WILHOIT, Judges.

HAYES, CHIEF JUDGE. Eddie Thompson, Jr. and Patricia Thompson appeal from an order and judgment of the Kenton Circuit Court dismissing a forcible detainer

proceeding and the appeal therefrom. The Peoples Liberty Bank and Trust Company of Covington, Kentucky, filed the complaint for forcible detainer in Kenton Quarterly Court in September, 1977. The quarterly court rendered judgment for the bank on September 26, 1977 and ordered that a writ of restitution issue. The writ of restitution was never executed. The Thompsons appealed the quarterly court judgment to Kenton Circuit Court on September 28, 1977. No action was taken by either party to the proceeding until March 5, 1979 when the bank moved to dismiss the case as being moot on the grounds that the bank had obtained the property pursuant to another Kenton Circuit Court action and had conveyed same in July, 1978. The Thompsons filed a motion for a trial date on March 9, 1979. On March 13, 1979 the circuit court entered a judgment dismissing the case with prejudice as being moot. From this judgment the Thompsons appeal.

The Thompsons have proceeded pro se in these proceedings and apparently in the several actions in the various Kenton courts, obviously a substantial contributing factor to the Thompsons' confusion and lack of understanding concerning this proceeding. Apparently the Thompsons no longer have the property in question and ask this court to order the circuit court to put them in possession of such property. However, the simple fact is, that the property was not taken from them as a result of this case, but such was accomplished in a separate circuit court action. The Thompsons are attempting to attack a judgment over which this court has no jurisdiction. The circuit court ordered the action dismissed explaining to the Thompsons in a hearing that that was the most relief which it could grant, i.e. the bank's forcible detainer proceeding would be dismissed with prejudice. Since the Thompsons had not been relieved of their property as a result of the forcible

detainer proceeding but rather had been so relieved as a result of a circuit court proceeding, the dismissal of the forcible detainer proceeding could not result in the Thompsons being placed in possession of the property in question. The circuit court was not in error in dismissing the proceedings with prejudice. It is the bank not the Thompsons, as they perceive, who are prejudiced with respect to the proceedings.

Since we have no jurisdiction over federal courts, we will not comment on the issue raised pertaining thereto.

The judgment is affirmed.

ALL CONCUR.

ATTORNEYS FOR APPELLANTS:

Patricia Thompson
Eddie Thompson, Jr., Pro Se
736 Highland Avenue
Covington, Kentucky 41011

ATTORNEY FOR APPELLEE:

Richard Nelson
11 West 6th Street
Covington, Kentucky 41011

EXHIBIT H

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

vs.

PEOPLES LIBERTY BANK,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE WILLIAM R. DUNN, JUDGE
ACTION NO. 33430

ORDER DENYING PETITION FOR REHEARING
(Entered June 27, 1980)

BEFORE: HAYES, Chief Judge, BREETZ, and WILHOIT, Judges.

The Court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

/s/ ANTHONY M. WILHOIT
Judge, Court of Appeals

ENTERED: JUNE 27, 1980

EXHIBIT I

SUPREME COURT OF KENTUCKY

80-SC-440-D
(79-CA-1456-MR)

PATRICIA THOMPSON AND
EDDIE THOMPSON, JR.,
Movants,

vs.

PEOPLES LIBERTY BANK,
Respondent.

KENTON CIRCUIT COURT
33430

ORDER DENYING DISCRETIONARY REVIEW
(Entered November 18, 1980)

The motion of Patricia Thompson and Eddie Thompson, Jr., for a review of the decision of the Court of Appeals is denied.

ENTERED November 18, 1980.

/s/ JOHN S. PALMORE
Chief Justice

[CERTIFICATION OMITTED]

EXHIBIT J

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

File No. 79-CA-1456-MR

PATRICIA THOMPSON AND
EDDIE THOMPSON, JR.

vs.

PEOPLES LIBERTY BANK

APPEAL FROM KENTON CIRCUIT COURT
ACTION NO. 33430

MANDATE

(Rendered May 2, 1980)

The opinion rendered on the above date, a copy of which is attached hereto and made a part hereof, is now final. It appearing that there is no error in the judgment of the Circuit Court, it is therefore the mandate of this Court that said judgment is hereby AFFIRMED.

JUNE 27, 1980 – Appellant's Petition for Rehearing Denied.

NOVEMBER 18, 1980 – Movant's Motion for Discretionary Review by Supreme Court Denied.

It further appearing that the Supreme Court of Kentucky has denied the appellant's motion for discretionary review, the appellee shall recover from the appellant damages of 10 percent on the amount of the judgment superseded herein.

/s/ JOHN C. SCOTT
Clerk

A Copy - Attest:

(SEAL)

Issued November 19, 1980

EXHIBIT K

[Def Ex-B]

MONTHLY LEASE

Covington, Kenton County, Kentucky July 19, 1978

We have this day rented by the month from The Peoples Liberty Bank and Trust Company the house located at 736 Highland Avenue, Covington, Kentucky for which we agree to pay $200.00 per month, IN ADVANCE, on the fifth day of each and every month. Upon non-payment of Rent within THREE DAYS after it shall become due, the said The Peoples Liberty Bank and Trust Comany shall have the right to re-enter and take possession of said premises without demand of rent or notice of possession.

We will not use said premises for any unlawful purpose or use said premises in violation of any laws relating to intoxicating liquors. Not responsible for accidents on premises.

/s/ BERNARD SMITH
Lessee

/s/ JAMES LILES
Lessee

The Peoples Liberty Bank and
Trust Company

/s/ R. V. HAILE, JR., PRESIDENT
Lessor

EXHIBIT L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION 79-40

EDDIE THOMPSON, JR., ET AL,

Plaintiffs,

vs.

PEOPLES LIBERTY BANK, ET AL.,

Defendants.

ANSWERS TO INTERROGATORIES

(Filed August 27, 1980)

Comes now Defendant, Bernard Smith, and submits the following Answers to Interrogatories:

1. Did you lease 736 Highland Avenue, Covington, Kentucky, on or about July 17, 1978.
   answer — Yes.
2. If so, from whom.
   answer — People's Liberty Bank.
3. Were you at the 736 Highland Avenue, Covington, Kentucky address on July 17, 1978, or at any other time.
   answer — Yes.
4. It is alleged that you leased 736 Highland Avenue for $200 per month. Did you.
   answer — Yes.

5. If not, do you know if anyone else leased 736 Highland Avenue for $200 per month.
answer – Not applicable.
6. It is alleged that you paid police officers $5 an hour to occupy 736 Highland Avenue from July 17, 1978 to some later date. Did you.
answer – No.
7. If not, do you know if any police officers were paid to stay at 736 Highland Avenue.
answer – Yes.
8. Who contacted you and/or other police officers to lease and/or stay at 736 Highland Avenue.
answer – Richard S. Nelson, Attorney for People's Liberty Bank.
9. Give the names of all police officers hired to stay at 736 Highland Avenue.
answer – R. Sterling, J. Liles, J. Gross, E. Schadler, R. Ford, B. Smith, and T. Finan.
10. If you do not know, give the names of those who would know.
answer – Not applicable.

/s/RICHARD S. NELSON
Attorney for Defendant, Bernard Smith
P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

[CERTIFICATION OMITTED]

I, Bernard Smith, state that I have read the foregoing Answers to Interrogatories and same are true and correct.

/s/ BERNARD SMITH

[NOTARIZATION OMITTED]

EXHIBIT M

[LETTERHEAD OF LAW OFFICES OF RICHARD S. NELSON]

October 11, 1976

Mr. Eddie Thompson, Jr.
736 Highland Avenue
Covington, Kentucky 41011

Re: Peoples Liberty Bank & Trust Company
vs. Eddie Thompson, et al.

Dear Mr. Thompson:

Reference is made to the suit filed against you by my client, The Peoples Liberty Bank and Trust Company.

On October 7th you forwarded to my client two money orders totaling $450.00 with a notation indicating that "These money orders are to pay three months mortgage (July, August and September)". The bank is perfectly willing to accept payments by you but the bank will define, pursuant to the terms of it's mortgage and promissory note, how those payments are to be applied.

I am returning your two money orders. If you desire to forward same to the bank and allow them to apply them as they desire, they will be accepted.

Very truly yours,

/s/ RICHARD S. NELSON

RSN/lst
Enclosures

EXHIBIT N

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., ET AL.,

Defendants.

WRIT AND ORDER OF POSSESSION

(Filed July 7, 1978)

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within ten (10) days verifying compliance with this Order:

> Commonly known as 736 Highland Avenue, Covington, Kentucky, and being more particularly described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

DATED at Covington, Kenton County, Kentucky, this 12 day of April, 1978.

/s/ D. J. GOODENOUGH
JUDGE

[CERTIFICATION OMITTED]

No. 80-1358

MAR 25 1981

ALEXANDER L. STEVAS
CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Petitioners-Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK AND TRUST COMPANY,
Respondents-Appellees-Plaintiffs.

RESPONDENTS REPLY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petition filed with the Court herein deals with an issue which is in fact moot.

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CONSTITUTIONAL

and

STATUTORY AUTHORITIES

United States Constitution
USCA Constitution Article 3 § 1 et seq.
Kentucky Revised Statutes

KRS 426.571 – When commissioner may convey real property – Death of party after sale. – (1) Real property may be conveyed by a commissioner appointed by the court:

(a) If by the judgment in an action a party be ordered to convey such property to another

(b) If such property have been sold under a judgment or order of the court and the sale confirmed

(2) The death of a party, after a sale, does not prevent a conveyance. It shall be made, and shall have the same effect, as if he were living.

KRS 426.572 – Requisites of commissioner's deed – The deed of the commissioner shall refer to the judgment orders and proceedings authorizing the conveyance, so that the same may be readily found.

KRS 426.573 – Title passed by deed made pursuant to judgment – A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

KRS 426.574 – Title passed by deed made pursuant to order of sale – A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.

KRS 426.005 – Personal Judgment in action to enforce mortgage or line – When Mortgage may be enforced – (1) in an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally.

(2) In an action to enforce a mortgage or other lien, a sale of the property may be ordered without giving time to pay money or do other act.

SUPREME COURT RULES

Sup. Crt. Rule 34 (6)

Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant immaterial and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the Court.

COUNTERSTATEMENT OF CASE

In light of the various mis-statements of fact in Petitioners' Statement of the Case, Respondents must clarify the issue at Bar.

In October 1976, Peoples Liberty Bank filed suit to enforce a promissory note upon which the Petitioners were grossly in default. As stated in Petitioners' statement of the case, the Kenton Circuit Court did, in fact, issue a Writ of Possession to Peoples Liberty Bank based on said action. Pl. Ex. N.

Pursuant to said Writ there was a Master Commissioner's Sale whereat Peoples Liberty Bank purchased the property in question and received the Master Commissioner's Deed thereto.

A forcible detainer action was then filed against Petitioners by Peoples Liberty Bank and same was granted by the Kenton Quarterly Court.

As Petitioners entire appendix reflects, this matter was fully litigated and the Quarterly Court's Judgment was affirmed throughout every appellate level of the Kentucky Court System.

The Respondent, having not executed on the order from the Kenton Quarterly Court, then proceeded to sell the property to the Hon. Richard Slukich.

In order to clear the Kenton Circuit Court Docket of needless actions, the Respondent then moved to dismiss the Forcible Detainer Action at Respondent's expense. Petitioners now bring this dismissal of a forcible detainer action before the Supreme Court of the United States.

ARGUMENT

All of the Petitioners' machinations and illusions of conspiracy not withstanding, the singular issue at Bar is whether the forcible detainer action dismissed at State Level by Respondent, at Respondent's expense, is moot. Such is Respondent's contention herein.

First, the Respondent must assert that Petitioners have subjected all parties hereto to a frivilous Appeal by including in their petition "burdensome, irrelevant, immaterial, and scandalous matter" in an attempt to cloud the very clear issue already conclusively litigated at state level. Such being the case, Respondent asserts that Petitioners' Brief should be disregarded and stricken by the Court. Sup. Ct. Rule 34.6

The Respondent further submits that, by dissecting the true issue from the spurious smoke screen of false and immaterial allegations asserted by Petitioners, the Court will find that the Petitioners have continuously appealed the dismissal of an action throughout State Court, a dismissal which in effect was a success to the Petitioners.

The facts are basic. Petitioners defaulted on their mortgage to Peoples Liberty Bank. The property was then sold

pursuant to the judgment on said note and Peoples Liberty Bank purchased the property by Master Commissioner's deed.

A forcible detainer action was then filed by Respondent in the now non-existent Kenton Quarterly Court. This was all authorized by Kentucky Law and pursued according to same. KRS 426.571; KRS 426.005; KRS 426.573; KRS 426.574; *Pemberton* v. *Harden,* Ky., 80 SW 2d 589 (1935); KRS 426.572.

As Petitioners' Brief clearly reflects, this forcible detainer order made its way through all levels on Kentucky Appellate Review which continually held in Respondent's favor. The property was then sold to a third party and, there no longer existing an Owner-Occupant relationship between Petitioners and Respondent dismissed the unexecuted forcible detainer action at its own expense, recognizing the matter as moot. Ky. CR 41.01

It must be asserted by Respondent that, should the dismissal of the forcible detainer action in Kenton Quarterly Court be reversed, a new hearing will be held where it will be established that no owner-occupant relationship exists and the matter will again be dismissed at Respondent's cost.

There exists no case or controversy before this court which is in a form historically viewed as capable of Resolution through judicial process. USCA Const. art. 3 § 1 et seq.; *Crossen* v. *Breckinridge,* 446 F. 2d 833, on remand 344 F. Supp. 587 (1971); see *Varney* v. *Weinberger,* 373 F. Supp. 678, affirmed 511 F. 2d 1404 (1974).

This matter is blatantly moot, and the Petition should therefore be dismissed.

CONCLUSION

In light of the fact that no case or controversy exists for which there is a remedy by judicial process and the obvious frivolity of the Petitioners' request for Certiorari, the within matter should be dismissed and the Petition for Writ of Certiorari denied.

Respectfully submitted,

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(606) 291-1511

CERTIFICATION OF SERVICE

I hereby certify that copies of the foregoing Reply Brief have been served by the United States Mail upon the following: Patricia Thompson, 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011; and Eddie Thompson, Jr., 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011 on this the 23 day of March, 1981.

RICHARD S. NELSON
Attorney for Respondents